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**REMARKS**

This response is intended as a full and complete response to the non-final Office Action mailed May 20, 2004. In the Office Action, the Examiner notes that claims 1-93 are pending, of which claims 1, 3-15, 17, 18, 20-35, 37-43, 45, 47-60, 62, 64-80, 82-98, 101-104, 107-116, 118 and 120-145 are pending of which claims 1, 3-15, 17, 18, 20-35, 37-43, 45, 47-60, 62, 64-80, 82-98, 101-104, 107-116, 118 and 120-145 are rejected. By this amendment, Applicants claims 1, 23, 37, 62, 80, 104, 110, 118, and 144 are amended, and claims 2, 16-19, 36, 44-61, 63, 81, 99-100, 106-106, 117, and 119 are cancelled.

In view of both the amendments presented above and the following discussion, Applicants submit that all of the claims now pending in the application comply with the enablement and written description requirements of 35 U.S.C. §112. Thus, Applicants believe that all of these claims are now in allowable form.

**OBJECTIONS**

The Examiner has objected to the disclosure because in the amendment filed 10 December 2002, on page 1, paragraph 4, line 5, the "demodulator 134" should be "demodulator 136" as shown in figure 12b. In response, Applicants have amended the specification as suggested by the Examiner. Therefore, Applicants respectfully submit that the Examiner's objection is moot and should be withdrawn.

**REJECTIONS****35 U.S.C. §112****Claims 17-18**

The Examiner has rejected claims 17 and 18 under 35 U.S.C. §112, ¶1, as failing to comply with the enablement requirement. In particular, the Examiner asserts that such claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicants respectfully traverse the rejection.

Claims 17-18

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The Applicants have cancelled claims 17-18. Therefore the rejection is now considered moot.

**Claims 1, 3-15, 17, 18, 20-35, 37-43, 45, 47-60, 82-98, 101-104, 107-116, 118, 120-145**

The Examiner has rejected claims 1, 3-15, 17, 18, 20-35, 37-43, 45, 47-60, 62, 64-80, 82-98, 101-104, 107-116, 118, and 120-145 under 35 U.S.C. §112, ¶1, as failing to comply with the written description requirement. In particular, the Examiner asserts that such claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Examiner further asserts that there is no support in the specification for (1) the limitation "a first tuner capable of selecting a digital audio signal" as recited in independent claim 1 and as similarly recited in independent claims 23, 37, 45, 62, 80, 104, 110, 118 and 144, and (2) the limitation of "receiving ... audio programs using ... a first tuner" as recited in claim 45. Applicants respectfully traverse the rejection.

The Applicants have canceled claims 45-61. Therefore, the rejection of these claims is now considered moot.

The Applicants have amended independent claim 1 to further clarify the features the Applicants consider as being inventive. In particular, claim 1 (and similarly, independent claims 23, 37, 62, 80, 104, 110, 118 and 144), as amended, recites:

"A hardware upgrade operably connected to a set top terminal the hardware upgrade comprising:  
an interface to the set top terminal through which a subscriber selection and digital audio signals that represent audio programs are received from the set top terminal, wherein the set top terminal comprises a first tuner coupled to a receiver that receives television program signals and the digital audio signals from a television program delivery system;  
audio processing circuitry, connected to the interface, that processes the digital audio signals, wherein the audio processing circuitry comprises a second tuner that tunes to a selected audio program in the received digital audio signals based on the received subscriber selection; and

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an output, connected to the processing circuitry, that outputs a selected audio signal that represents the selected audio program based on the subscriber selection." (emphasis added).

The Applicants claim a first tuner coupled to a receiver that receives television program signals and the digital audio signals from a television program delivery system. Support for the Applicants amendment may be found in the Applicants' specification, which discloses:

Where digital audio programs are delivered to the set top terminal 220, the Level D upgrade (shown in FIG. 12b) provides the subscriber with the means to select a given digital audio program for listening.

The Level D hardware upgrade makes use of a tuner 134 that is separate from the tuner 603 used by the set top terminal 220 for video display. The digital audio signal is received at the set top terminal 220 over the CATV transmission media. The set top terminal 220, in turn, routes the digital audio signal to the components of the Level D hardware upgrade. (see Specification, page 73, lines 11-18, and FIG. 12b).

Thus, the receiver of the set top terminal forwards the digital audio signals to the audio processing circuitry (i.e., of the Level D hardware), where the second tuner of the audio processing circuitry tunes to a selected audio program in the received digital audio signals based on the received subscriber selection.

As such, the Applicants submit that Independent claim 1, and similarly, Independent claims 23, 37, 62, 80, 104, 110, 118, and 144, as amended, comply with the enablement requirement, and are fully patentable under the requirements of 35 U.S.C. §112, ¶1. Furthermore, claims 3-15, 17, 20-22, 24-35, 37-43, 64-79, 82-98, 101-103, 107-109, 111-116, 120-143, and 145 depend from independent claims 1, 23, 37, 62, 80, 104, 110, 118, and 144 and recite additional features thereof. As such and at least for the same reasons discussed above, the Applicants submit that these dependent claims also comply with the enablement requirement, and are fully patentable under the requirements of 35 U.S.C. §112, ¶1. Therefore, the Applicants respectfully request that the rejection be withdrawn.

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**CONCLUSION**

Thus, Applicants submit that all of the claims presently in the application comply with the enablement and written description requirements of 35 U.S.C. §112, ¶1. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Steven M. Hertzberg or Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

**CHANGE OF CORRESPONDENCE**

For the convenience of the Examiner, herewith is attached a copy of a previously filed Power of Attorney/Change of Correspondence Address.

Respectfully submitted,

Dated: 10/20/04

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